

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHAUKAT "SAL" MAREDIA, et al.,) 1:05-cv-00393-OWW-SMS
)
Plaintiffs,) ORDER PERMITTING THE FILING OF
) SUPPLEMENTAL BRIEFING NO LATER
v.) THAN AUGUST 13, 2007
)
PHILIP MORRIS USA INC., et) INFORMATIONAL ORDER TO MOVING
al.,) COUNSEL
)
Defendants.)
_____)
)
PHILIP MORRIS USA INC.,)
)
Counter-Claimant,)
)
v.)
)
SHAUKAT "SAL" MAREDIA,)
)
Counter-Defendant.)
_____)

Defendant and Counter-claimant Philip Morris USA, Inc. is proceeding with a civil action in this Court. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302(c)(19) and 72-303. Counter-claimant has filed a motion for default judgment on the counterclaim.

An application for a default judgment qualifies as a motion pursuant to Fed. R. Civ. P. 7(b)(1) and Local Rule 1-101(19), and it should include briefs pursuant to Local Rule 78-230(b). Thus,

1 when seeking a default judgment, a plaintiff should provide the
2 Court with briefing containing citations to pertinent authority
3 showing that the Plaintiff is entitled to the relief requested
4 against the defaulting party. In the absence of such authority,
5 the Court may vacate the hearing on the motion pending
6 appropriate briefing, or the Court may be unable to recommend the
7 granting of the requested relief.

8 Generally, the scope of proceedings on an application for
9 default judgment involves a determination of damages, which
10 Plaintiff must prove by evidence, whether by affidavits where an
11 evidentiary hearing is waived, Davis v. Fendler, 650 F.2d 1154,
12 1161-62 (9th Cr. 1981), or by evidence, Fed. R. Civ. P. 55(b)(2).
13 Fed. R. Civ. P. 55(b)(2) provides in pertinent part:

14 If, in order to enable the court to enter judgment or to
15 carry it into effect, it is necessary to take
16 an account or to determine the amount of damages or
17 to establish the truth of any averment by evidence or
18 to make an investigation of any other matter, the court
19 may conduct such hearing or order such references as it
20 deems necessary and proper and shall accord a right of
21 trial by jury to the parties when and as required by
22 any statute of the United States.

23 The Court thus anticipates that a party seeking a default
24 judgment will provide the Court with evidence sufficient to prove
25 the amount of any damages sought. The party should also provide
26 the Court with legal authority in support of the measure of
27 damages sought to be applied by the party.

28 Here, the moving party has not provided the Court with legal
authority concerning the measure of damages sought by the moving
party. Further, although the moving party urges the Court to
shift the burden of proof, it does not appear that the party has
provided the Court with analogous case authority from California,

1 or any other jurisdiction, concerning the application of this
2 principle in the context of an application for a default
3 judgment.

4 Accordingly, it IS ORDERED that Defendant and Counter-
5 claimant MAY FILE supplemental briefing no later than August 13,
6 2007, addressing the measure of damages and providing pertinent
7 authority, including analogous case authority, concerning
8 shifting the burden of proof in the context of an application for
9 default judgment.

10 Further, in view of the form of the courtesy copy of the
11 pertinent moving papers submitted to the Court, counsel for
12 Defendant and Counterclaimant IS INFORMED that when a courtesy
13 copy is delivered to the Court, it should be appropriately
14 fastened and tabbed, and it should be clearly labeled "Courtesy
15 Copy."

16 IT IS SO ORDERED.

17 **Dated: July 27, 2007**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE